

SENATE MOTION

MR. PRESIDENT:

I move that Engrossed House Bill 1181 be amended to read as follows:

- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2 "SECTION 1. IC 8-1-2-115.1 IS ADDED TO THE INDIANA
- 3 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2001]: Sec. 115.1. (a) As used in this section,
- 5 "utility" refers to any of the following:
- 6 (1) A public utility over which the commission has
- 7 jurisdiction.
- 8 (2) The department of public utilities created under
- 9 IC 8-1-11.1.
- 10 The term does not include a corporation covered by IC 8-1-13 or
- 11 by IC 8-1-17.
- 12 (b) If, after notice and hearing, the commission finds that a
- 13 utility has:
- 14 (1) violated a provision of this title over which the commission
- 15 has jurisdiction;
- 16 (2) failed to comply with any determination, requirement,
- 17 direction, or order of the commission made under this title; or
- 18 (3) failed to comply with a rule adopted by the commission
- 19 under this title;
- 20 the commission may act as provided in subsection (c) or (e).
- 21 (c) Except as provided in subsection (d), the commission may
- 22 issue an order that does one (1) or more of the following if the
- 23 commission makes a finding under subsection (b):
- 24 (1) Impose a civil penalty of not more than the following:
- 25 (A) Five thousand dollars (\$5,000) for the first violation or
- 26 noncompliance.
- 27 (B) Fifteen thousand dollars (\$15,000) for each subsequent
- 28 violation or noncompliance occurring within a period of
- 29 thirty-six (36) months following the date of a previous
- 30 violation found to have occurred by the commission.
- 31 For purposes of this subdivision, the commission may

consider each day a violation or noncompliance occurs to be a separate violation or noncompliance. A civil penalty imposed under this subdivision may not exceed two million five hundred thousand dollars (\$2,500,000) per calendar month.

(2) Issue an order that the utility cease and desist from the violation or noncompliance.

(3) Issue an order mandating corrective action to alleviate the violation or noncompliance.

(4) Revoke or modify the terms of the utility's certificate of territorial authority, certificate of public convenience and necessity, or other permit issued by the commission.

(d) A utility may not be subject to both a penalty under this section and a penalty under a commission approved settlement agreement for the same violation or noncompliance. If the commission approves a settlement agreement that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, the remedies provided in this section do not apply to those violations or noncompliance during the lifetime of the settlement agreement.

(e) The commission shall consider the following when determining the appropriateness of the amount of a civil penalty or compromise amount:

(1) The size of the utility.

(2) The gravity of the violation or noncompliance.

(3) The good faith of the utility in attempting to remedy the violation or achieve compliance after receiving notification of the violation or noncompliance.

(f) This section does not apply when the violation or failure of the utility was caused by any of the following:

(1) Customer provided equipment.

(2) The negligent act of a customer.

(3) An emergency situation.

(4) An unavoidable casualty.

(5) An act of God.

(g) The attorney general shall bring an action in the name of the state of Indiana to enforce an order of the commission under subsection (c), including the collection of an unpaid civil penalty imposed by the commission under subsection (c)(1). The attorney general shall bring the action in a court that has jurisdiction.

(h) All civil penalties accruing under this section are cumulative. A suit for recovery of one (1) civil penalty does not bar or affect:

(1) the recovery of any other civil penalty or forfeiture; or

(2) a criminal prosecution against:

(A) a public utility;

(B) an officer, a director, an agent, or an employee of a public utility; or

(C) any other person.

(i) The secretary of the commission shall direct any civil penalties collected under this section as follows:

(1) Penalties assessed for violations that directly affect ratepayers shall be refunded directly to the customers of the subject utility in the form of credits on customer bills.

(2) Penalties assessed for violations that directly harm another utility shall be awarded directly to the other utility.

(3) Penalties assessed for violations that do not directly affect ratepayers or harm another utility shall be deposited into the commission public utility fund account established under IC 8-1-6.

(j) The commission shall use penalties deposited into the utility fund account for:

(1) consumer education;

(2) promotion of utility competition; or

(3) any other purpose considered by the commission to further the public interest.

(k) The commission shall provide to the regulatory flexibility committee a report detailing how penalties deposited into the public utility fund account were distributed.

(l) Penalties deposited into the public utility fund account shall not be included in:

(1) the calculation of the difference between actual expenditures and appropriations described in IC 8-1-6-1(b);

or

(2) any public utility fee credit.

(m) The authority granted under this section is in addition to, and may be exercised independently of, any other authority granted under this article.

SECTION 2. IC 8-1-2-128 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 128. (a) As used in this section, "utility" refers to any of the following:

(1) A public utility over which the commission has jurisdiction.

(2) The department of public utilities created under IC 8-1-11.1.

The term does not include a corporation covered by IC 8-1-13 or by IC 8-1-17.

(b) If the commission:

(1) determines that the provision of utility service is necessary to prevent injury to any person or to alleviate an emergency; and

(2) directs a utility to provide utility service;

the utility shall provide utility service within twenty-four (24) hours after receiving direction from the commission.

(c) If the commission finds that a utility has violated subsection (b), each day that the utility fails to provide service as directed by

1 **the commission is considered a separate violation for purposes of**
 2 **imposing civil penalties under section 115.1 of this chapter.**

3 SECTION 3. IC 8-1-2-129 IS ADDED TO THE INDIANA CODE
 4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 5 1, 2001]: **Sec. 129. The commission may require a public utility to**
 6 **post a reasonable performance bond as a condition of the public**
 7 **utility's operation in Indiana. The reasonable performance bond**
 8 **may not exceed two million dollars (\$2,000,000).**

9 SECTION 4. IC 8-1-6-2 IS AMENDED TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) All fees herein prescribed
 11 shall be paid into the treasury of the state of Indiana through the
 12 secretary of the commission and quietused into an account to be known
 13 as the commission public utility fund account. This account shall be
 14 used for enforcing the provisions of IC 8-1-1 and IC 8-1-2 and shall be
 15 utilized only for the purpose of funding the expenses of the commission
 16 and the consumer counselor in amounts not in excess of their
 17 respective appropriations by the general assembly, plus the contingency
 18 fund. All appropriations under this chapter paid out of the commission
 19 public utility fund account shall be subject to the prior approval of the
 20 general assembly, the governor, and the ~~state~~ budget agency.

21 **(b) The following shall also be deposited in the commission**
 22 **public utility fund account:**

23 **(1) Fees collected from municipalities under IC 8-1-2-85. ~~shall~~**
 24 **~~also be deposited in the commission public utility fund account,~~**
 25 **~~as if they were fees collected from public utilities under this~~**
 26 **~~chapter.~~**

27 **(2) Civil penalties collected under IC 8-1-2-115.1."**

28 Delete pages 2 through 3.

29 Renumber all SECTIONS consecutively.

(Reference is to EHB 1181 as printed April 6, 2001.)

Senator LANANE